

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DALE A. GUILFOIL,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 06-493-GMS
)	
DAVID PIERCE, et al.,)	JURY TRIAL REQUESTED
)	
Defendants.)	

DEFENDANTS' ANSWER TO THE COMPLAINT

COME NOW Defendants David Pierce, James Scarborough and Karl Hazzard (“Defendants”), by and through the undersigned counsel, and hereby answer the Complaint:

1. Admitted that on February 14, 2006, Plaintiff was moved to Building W-1, Tier B, at Delaware Correctional Center, and assigned the top bunk in Cell 4. Defendants are without sufficient information to admit or deny the remaining allegations set forth in this paragraph.

2. Admitted that Plaintiff submitted grievances dated February 15, 2006. The remaining allegations set forth in this paragraph are denied.

3. Admitted that Plaintiff’s medical file includes a memorandum dated February 20, 2006, and the memorandum references “bottom bunk” and includes a signature which is not legible. Defendants are without sufficient information to admit or deny the remaining allegations set forth in this paragraph.

4. Defendants are without sufficient information to admit or deny the allegations set forth in this paragraph.

5. Defendants are without sufficient information to admit or deny the allegations set forth in this paragraph.

6. Denied.

7. Admitted that Plaintiff submitted a grievance dated April 24, 2006. The remaining allegations set forth in this paragraph are denied.

8. Admitted that, in a letter dated May 20, 2006 to Defendant Pierce, Plaintiff addressed his bunk assignment, and a memorandum dated June 5, 2006 from Defendant Pierce indicates that Plaintiff's correspondence was forwarded to Director of Nursing Eller. Defendants are without sufficient information to admit or deny the remaining allegations set forth in this paragraph.

9. Defendants are without sufficient information to admit or deny the allegations set forth in this paragraph.

10. Admitted that there is attached to the Complaint a letter dated July 7, 2006 from Scott Altman to Plaintiff. The remaining allegations set forth in this paragraph are denied.

11. Denied that Defendants were deliberately indifferent. Defendants are without sufficient information to admit or deny the remaining allegations set forth in this paragraph.

12. Defendants are without sufficient information to admit or deny the allegations set forth in this paragraph.

RELIEF

13. It is specifically denied that Plaintiff is entitled to compensatory, punitive or any monetary damages.

14. It is specifically denied that Plaintiff is entitled to injunctive, declaratory or any other relief.

AFFIRMATIVE DEFENSES

- 15. Plaintiff has failed to state a claim upon which relief can be granted.
- 16. Plaintiff has failed to exhaust his administrative remedies.
- 17. Defendants are immune from liability under the Eleventh Amendment.
- 18. Defendants are entitled to qualified immunity.
- 19. As to any claims under state law, Defendants are entitled to immunity under the State Tort Claims Act, 10 *Del. C.* § 4001, *et seq.*
- 20. As to any claims under state law, Defendants are entitled to sovereign immunity.
- 21. Insufficiency of service of process.
- 22. Insufficiency of process.
- 23. Lack of jurisdiction over the person and subject matter.

WHEREFORE, Defendants respectfully request that judgment be entered in their favor and against Plaintiff as to all claims and that attorney fees be awarded to them.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Eileen Kelly
Eileen Kelly, I.D. #2884
Deputy Attorney General
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
eileen.kelly@state.de.us
Attorney for Defendants

Date: February 13, 2007

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2007, I electronically filed *Answer to the Complaint* with the Clerk of Court using CM/ECF. I hereby certify that on February 13, 2007, I have mailed by United States Postal Service, the document to the following non-registered party: Dale Guilfoil.

/s/ Eileen Kelly
Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
eileen.kelly@state.de.us